

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

Before:

Shameer Janhangeer	-	Vice-President
Abdool Rahoof Saib	-	Member
Philippe Edward Blackburn	-	Member
Maurice Christian Aimé Laurette	-	Member

In the matter of:-

ERT/RN 18/12

Social Welfare and Community Centres Employees Union

Disputant

and

Sugar Industry Labour Welfare Fund

Respondent

The Social Welfare and Community Centres Employees Union (the “*Union*”) and Sugar Industry Labour Welfare Fund (the “*SILWF*”) have jointly referred the present labour dispute for voluntary arbitration to the *Tribunal* pursuant to *section 63* of the *Employment Relations Act 2008* (the “*Act*”).

The terms of the labour dispute referred by both parties read as follows:

- (i) *Whether an employee reckoning at least 25 years continuous service in the same post should be paid an additional increment as per PRB Report 2003;*
- (ii) *Whether those persons employed by the Committee of Social Welfare and Community Centres and taken over by Sugar Industry Labour Welfare Fund as from 13th August 1987 with continuity of service should*

be eligible to that additional increment for reckoning at least 25 years continuous in the same post.

The *Union* is representing the former employees of the Committee of Social Welfare and Community Centres who are now employed under the *SILWF* since 13 August 1987. The *SILWF* is a body set up under the *Sugar Industry Labour Welfare Fund Act* (Act No. 47 of 1974) which has established the Sugar Industry Labour Welfare Fund Committee. Both parties were represented by counsel in the matter and each has put in a statement of case.

The *Union* in its statement of case has mainly averred that the *SILWF* should recognise the length of service of the former employees of the Social Welfare Centres as continuous (vide letter dated 14 August 1987 attached as Annex A to the statement of case). The *SILWF* has refused to pay an additional increment as per the recommendation at paragraph 1.33 of the *Pay Research Bureau Report 2003* (the "*PRB Report*"). A dispute was reported to the *Commission for Conciliation and Mediation* (the "*CCM*") in respect of recognition of length of service as continuous and the agreement (dated 30 September 2010) reached before the *CCM* has been attached as Annex C. The *Union* is contending that when the employees joined the *SILWF* in 1987, they were already drawing different salaries in the salary scale which shows that they were drawing increments on a yearly basis and when the employees joined the Fund, their posts were only restyled and that they were performing the same job as in their previous employment. The *Union* has finally averred that the *Tribunal* should consider that the employees employment with the Committee of the Social Welfare be counted as continuous service with the Fund and reckon the past years of service of those employees prior to 13 August 1987 as a result of which they should be entitled to payment of an additional increment.

The *SILWF* has in its statement of case notably stated that it falls under the purview of the *PRB Report* and that it has effected payment of the increment to its employees who have satisfied the requirements laid down in the *PRB Report*. The *SILWF* has also referred to the *Personnel Management Manual 2002* (the "*PMM*") in relation to the payment of increments in the public sector. Furthermore, it has averred that the workers were formerly employed by the Committee of Social Welfare and Community Centres which fell under the direct administrative control of the Social Welfare Division. Reference has also been made to the *Government Social Welfare Centres Act* (Act No. 64 of 1961), under which the aforesaid committee has been set up and provides for its powers. In relation to the employees who are now employed by the *SILWF*, the Respondent has averred that the disputant has not been able to produce their letters of appointment and/or confirmation to show that they were employed by the Committee of their respective Social Welfare Centres and to show that they were confirmed in their posts.

At the hearing of the matter, counsel for the *SILWF* stated that the first point in dispute is not being contested. The matter was therefore heard on the second point in dispute.

Counsel for the Disputant called Mr Vivekanand Dhooky, Assistant Secretary of the *Union*. The witness notably stated that in August 1987, the Government came up with a scheme of service for the workers of the Social Welfare Centres to be under the establishment of the *SILWF*. An official letter was issued on 13 August 1987 (vide Annex A of the Disputant's statement of case), wherein it was stated that their length of service with the Social Welfare Centre will count as continuous with the *SILWF*. When the *PRB Report 2003* was issued, they did not receive their one additional increment. They wrote to the Ministry of Social Security and the *SILWF* who did not respond favourably to them. The legal advisor of the Fund contested their continuity of service (vide Annex B of the Disputant's statement of case). He produced a letter addressed to the Respondent dated 6 September 2006 (marked Document A) and a letter dated 24 November 2006 from the *SILWF* addressed to the Social Welfare Commissioner (marked Document B) in relation to requests of the *Union* for the recognition of time of service and for payment of the additional increment. However, there was no agreement reached. On 29 September 2009, they wrote to the *Ministry of Labour, Industrial Relations & Employment* (letter produced as Document C) and the matter was referred to the *CCM*. At the *CCM*, there was an agreement to recognise the length of service as continuous, following which they sent a letter to the Respondent dated 3 December 2010 for the payment of the increments to be effected (vide Annex D of the Disputant's statement of case). There are about 50 persons concerned having 20 years' service prior to 1987. According to him, the *SILWF* must be aware of the length of service of the workers. He is asking the *Tribunal* to determine whether they are eligible for the additional increment as per the *PRB Report 2003*.

Mr V. Dhooky was cross-examined by counsel for the Respondent. He stated that the Social Welfare Community Centres fell under the *Government Social Welfare Centre Act* (annexed as Document G to the Respondent's statement of case). He maintained that when they were taken by the *SILWF* it was stated that their length of service would count "with all intents and purposes". The officers concerned were on a permanent basis, they drew increments and were drawing different points of salary when they joined the *SILWF* in August 1987. The witness notably produced a list of 69 employees integrated with the *SILWF* on 13 August 1987 showing their designation and their salary (marked Document D). He did not have the information as to the date they were confirmed with the Centres under the Social Welfare Division. He is aware that human resource procedures at the *SILWF* are regulated by the *PMM*. There were workers who were drawing their top salary. He maintained that they were confirmed and they were being paid all their benefits. Logically, their date of appointment in the service would be a year after. According to the letter from the *SILWF* (Annex A of the Disputant's statement of case) their length of service with the Social Welfare Centres would count.

Under re-examination, Mr V. Dhooky notably stated that he does not believe that the workers have ever received a paper that they have been confirmed in their post.

Counsel for the Disputant called a second witness Mrs Zaheboon Joomun, Community Support Officer, who is also the President of the *Union*. She stated that she started work with the Social Welfare and Community Centres on 2 February 1978 as social worker, then community worker and then committee welfare assistant. In 1987, she joined the *SILWF*. Since 1978, she has never received any paper to the effect that she is confirmed in her post. She believes that she must be confirmed as she is drawing increments on her salary before 1987.

Under cross-examination from counsel for the Respondent, Mrs Z. Joomun stated that she was never told whether she was still on probation or confirmed or what was going on. She maintained that she was drawing her increments; however she did not receive the increment for her 25 years in service. She has received her increment this year as she has completed 25 years with the *SILWF* since 1987. She also stated that the *SILWF* told her that they have no evidence, despite them (the employees) producing their proofs to the *SILWF*. They only received a document as to when they joined. She furthermore maintained that she has never received a letter of confirmation from the Social Welfare Commissioner.

The Respondent called Mr Sanjay Gooneadry, Personnel Officer at the *SILWF*, to depose on its behalf. He stated that the *SILWF* is a parastatal body which follows the guidelines to be found in the Personnel Management Manual. He requested but did not receive information in respect of the confirmation of the status of the employees who are part of the *Union* (vide correspondences attached as Documents H1 to H4 of the Respondent's statement of case). He explained that in 1987, following a Cabinet decision the *SILWF* were directed to implement the said decision and produced notes of meeting dated 18 August 1987 in relation to same (marked Document E). Mr Gooneadry also referred to a proposal from the Chair of the aforesaid meeting that a second letter be issued to those employees who had accepted the offer of the quantum of salary increase. He further stated that when they implemented the decision (in 1987) they were not aware what would be in the *PRB Report 2003*. When the employees were appointed with the Fund, they start to obtain the benefits and entitlements as an officer of a parastatal body. He denied that no letters of confirmation were issued. When the employees were taken over by the *SILWF* in 1987, their posts were restyled on their establishment. The posts were newly created from 1987 to implement the decision. He has written to the Social Welfare Commissioner for the employees' letter of employment and their scheme of service (vide Document H1). He does not know whether their scheme of duties has remained the same or has changed.

Mr S. Gooneadry was cross-examined by counsel for the Disputant. He notably stated that he is not aware what work the employees were doing prior to joining the *SILWF*. He cannot say if they are doing the same work as before as he does not have their previous scheme of service or other documentary evidence required. When the employees were taken over by the *SILWF*, they were integrated, there was no interview as they had to implement a Cabinet decision. The employees were only sent one letter of appointment, i.e. letter dated 14 August 1987 from the *SILWF*. There is no reference to the *PRB* in the

aforesaid letter from the *SILWF* and it was not excluded either. Under the *Government Social Welfare Centres Act*, the employees were not deemed to be government servants. The employee when integrating the *SILWF* came with their length of service. He maintained that he has not received the information in relation to the terms and conditions of service with the Social Welfare Division. The letter from the *SILWF* for the appointment to take effect from 13 August 1987 is a letter of substantive appointment.

Mr S. Gooneadry was re-examined by counsel for the Respondent and notably stated that he does not deny that the employees must receive the increment; however, the *SILWF* are taking the date of appointment with the Fund of the officer with the parastatal body to pay the increment in 2011 according to *paragraph 1.33* of the *PRB Report 2003* or even the *PRB Report 2008*, which provides for 24 years' service.

Both counsel have submitted in relation to the dispute at hand.

Counsel for the *Union* firmly submitted that had the employees not been confirmed with the Social Welfare Centres, they would not have been drawing salaries on different scales as per the evidence. Furthermore from the letter (dated 14 August 1987), there was no exclusion of the *PRB Report* which was already in existence prior to 1987.

Counsel for the Respondent, in her submissions, stated that the issue of the dispute is the date of the confirmation of the employees. She further stated that if the employees prove satisfactorily that they were confirmed in their posts on such and such date, the Fund will pay the increment as from the appropriate date due 24 years later. In relation to the length of continuous service referred to in the letter dated 14 August 1987, the Fund is prepared to consider the increment to be counted as continuous service with the Fund if the date (of confirmation) is provided to the Fund. The Fund is unclear to which date they would have to start to pay the increment. She notably stated that the Fund is not disputing that it has to pay the increment.

After having heard the evidence and considered the submissions of counsel, the *Tribunal* is left to determine whether the persons formerly employed by the Committee of Social Welfare and Community Centres and who are now employed in the service of the *SILWF* with effect from 13 August 1987 should be eligible to the additional increment for having 25 years continuous service in the same post as has been recommended by *paragraph 1.33* of the *PRB Report 2003*.

Although the Respondent has not contested the first point of the dispute, i.e. whether an employee reckoning at least 25 years of continuous service in the same post should be paid an additional increment as per *PRB Report 2003*, the relevant

recommendation of the *PRB Report 2003* does invite consideration. *Paragraph 1.33* of the *PRB Report 2003 Volume I* reads as follows:

- (v) *Officers reckoning 25 years' service in a single grade, and who have been drawing the top salary of their scale prior to this Report, should be granted the converted salary corresponding to an additional increment to be read from their scale or the master salary scale with effect from 1 July 2003.*

The aforementioned recommendation from the *PRB Report 2003* clearly does not confer an automatic right to an additional increment in as much the person claiming to be entitled to same must satisfy the conditions stated therein. In particular, the officer, prior to the *Report*, should have been in the service for 25 years in a single grade and must have been drawing the top salary of his salary scale.

It may be noted from the *PRB Report 2003* that the *SILWF* is a statutory body whose pay and grading structures and conditions of service fall under the aforesaid *Report* (vide *PRB Report 2003 Volume II, Part II*).

The evidence in this matter has shown that the 69 workers of the Social Welfare Centres (as per the list produced as Document D) were offered employment by the Respondent with effect from 13 August 1987 via a letter dated 14 August 1987. It is also pertinent to note what has been stated at paragraph 2 of the aforesaid letter (as annexed to the Disputant's statement of case):

- 2. *I am also to inform you that for your employment with the Fund, your length of continuous service with the Committee of the Social Welfare of Goodlands will, to all intents and purposes, be counted as continuous service with the Fund.*

Despite the clear wordings of the aforesaid paragraph, the *Union* has gone into great lengths to resolve the issue of recognition of length of service and eventually reached an agreement with the *SILWF* before the *Commission for Conciliation and Mediation* on 30 September 2010 of which paragraph (1) reads as follows:

- (1) *The Sugar Industry Labour Welfare Fund recognizes that the service of the Social Welfare & Community Centre employees with the Committees of the Social Welfare Centres will, for all intents and purposes, be reckoned as continuous service with the Fund.*

The content of the agreement reached before the *CCM* on this issue is not contrary to the terms and conditions on which the employees of the Social Welfare Centres were offered appointment on 14 August 1987. The phrase "*all intents and purposes*" which is common to both the letter dated 14 August 1987 and the agreement is unambiguous in the context of the length of service of an employee being deemed to be continuous.

Furthermore, the evidence adduced on behalf of the Respondent is of some significance. Mr S. Gooneadry has not spared any efforts in writing to the Social Welfare Commissioner for the required information in relation to the requests made by the *Union* in relation to the present dispute. Nevertheless, the required information in this matter has not been forthcoming. This information would have made known the date the employees joined employment with the Committee of Social Welfare and Community Centres as well as determine whether the employees were performing the same work and/or were integrated in the same post as when previously employed under the aforesaid Committee. It may also be noted that the evidence of the witness that new posts were created on the establishment to implement the decision to integrate the workers with the *SILWF* was not disputed. Although the issue of the posts does not form part of the present dispute, this cannot be left unnoticed in view of the requirement for the person to be in a single grade in the aforementioned recommendation of the *PRB Report 2003*.

It is therefore difficult to see how the length of service of those employees with the Social Welfare Centres cannot be counted as continuous with their length of service with the *SILWF* for the purpose of the grant of an additional increment as has been, among other things, provided for in *paragraph 1.33 (v)* of the *PRB Report 2003*.

Moreover, it may be noted that this is not overall inconsistent with the stand of the Respondent (as stated by counsel in submissions) to the effect that it is not disputing that the additional increment should be paid provided that the necessary information is made available and the employees concerned prove same to the satisfaction of the *SILWF*.

The *Tribunal* has drawn the attention of counsel in this matter that it cannot pronounce on whether each individual worker who joined the *SILWF* in August 1987 from the Social Welfare Centre would be eligible for the additional increment recommended in the *PRB Report 2003*. Each worker would have his own particular circumstances on whether they would be eligible or not for the additional increment and any worker who firmly believes that he would meet this entitlement would be advised to report a case on his own.

In the circumstances, the *Tribunal* can only award that those workers, formerly employed by the Committee of Social Welfare and Community Centres and are now integrated with the *SILWF* as from 13 August 1987, who satisfy the conditions of eligibility set out in *paragraph 1.33 (v)* of the *PRB Report 2003* and have opted to accept the revised terms and conditions of service as set out in the aforesaid *Report* be granted the additional increment with effect as from 1 July 2003.

(SD) Shameer Janhangeer
(Vice-President)

(SD) Abdool Rahoof Saib
(Member)

(SD) Philippe Edward Blackburn
(Member)

(SD) Maurice Christian Aimé Laurette
(Member)

Date: 11 June 2012